

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2965 OF 2004

Sun Jewels Pvt. Ltd. .. Petitioner.

V/s.

The Commisioner of Customs
(Appeals) & Ors. .. Respondents.

Mr.Birendra Saraf i/b.S.R.Legal for the petitioner.
Mr.S.S. Pakhale with Mr.Y.R.Mishra i/b. T.C. Kaushik
for the respondents.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 23RD DECEMBER, 2004.

P.C. :

Heard.

2. Rule. Returnable forthwith.

3. The advocate on record for the respondents
waives service.

4. By consent the rule is treated on board
for final hearing.

5. At the outset the learned counsel for the
respondents handed in the communication dated
December 22, 2004 received by him from the Deputy
Commissioner of Customs, SEEPZ-SEZ, Andheri (East),
Mumbai. The same is taken on record and marked 'X'

for identification purposes.

6. From the said communication, it transpires that the pre-deposit as ordered by the Commissioner (Appeals) was already paid. In the circumstances, dismissal of the appeal by the Commissioner (Appeals) for non payment of pre-deposit was not justified.

7. Though the petitioner preferred appeal against the order passed by the Commissioner (Appeals) dismissing the petitioner's appeal for non-payment of pre-deposit, the said appeal was barred by time. The application for condonation of delay was taken out by the petitioner before the Customs, Excise & Service Tax Appellate Tribunal (for short 'the Tribunal') but the Tribunal was not persuaded by the sufficient cause and dismissed the appeal. Having considered the matter, we are of the view that the order of the Tribunal dated March 3, 2004 and the order of the Commissioner (Appeals) cannot be sustained.

8. We, accordingly, set aside the said orders and restore appeal No.S/49-16/2001 TE (Airport) to the file of the Commissioner of Customs (Appeals) for consideration of the said appeal on merits.

9. The petitioner is directed to appear before the Commissioner of Customs (Appeals) Airport, Mumbai on January 24, 2005. The Commissioner of Customs (Appeals) may hear the appeal on that day or fix any date for hearing of the appeal.

10. Rule is disposed of in aforesaid terms. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)